

83-2118

No. [REDACTED]

Office - Supreme Court  
FILED

JUL 25 1984

ALEXANDER L. STEVENS  
CLERK

# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1983

LLOYD VICKROY,  
*Petitioner,*

VS.

ROCKWELL INTERNATIONAL CORPORATION,  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL UNION 2295,  
*Respondents.*

### OPPOSITION TO GRANTING WRIT OF CERTIORARI

DAVIS, FROMMER & JESINGER

ELIZABETH R. LISHNER

1308 W. 8th Street, 4th Floor

P.O. Box 17948

Los Angeles, California 90017-4484

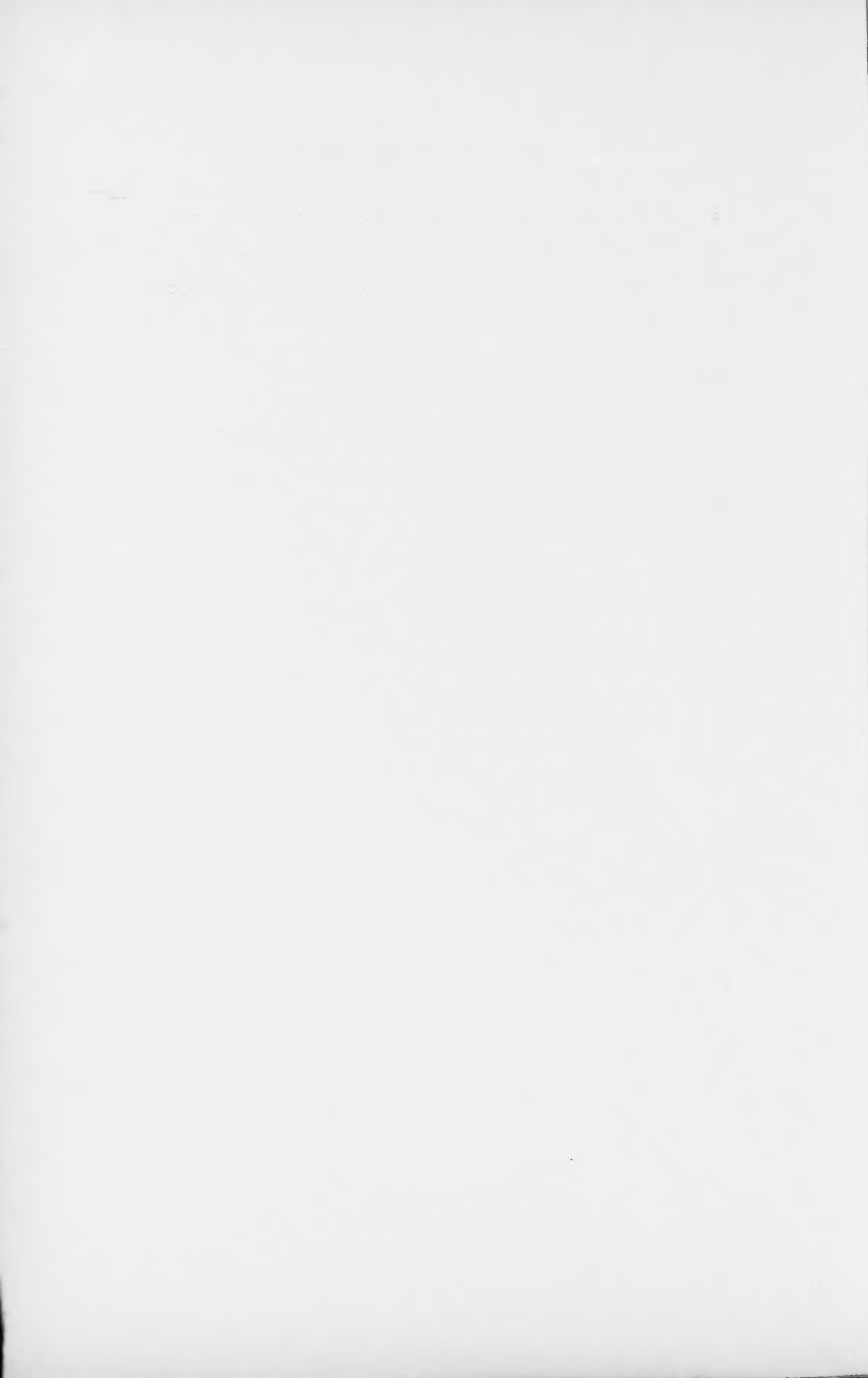
Telephone: (213) 385-3071

*Attorneys for Respondent*

*International Brotherhood*

*of Electrical Workers*

*Local Union 2295*



## TABLE OF CONTENTS

	<u>Page</u>
1. The Magistrate did not exceed her authority under 28 U.S.C. section 636 .....	1
2. There was no error by the lower courts in evaluating Petitioner's claims for alleged violation of civil rights .....	2
Conclusion .....	4

## TABLE OF AUTHORITIES CITED

### Cases

Barrentine v. Arkansas-Best Freight System, Inc., 405 U.S. 728 (1981) .....	3
Clayton v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, 451 U.S. 679 (1981) .....	3
San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) .....	3

### Statutes

28 U.S.C.:	
Section 636 .....	1, 2, 4
Section 636(b)(1)(B) .....	1
29 U.S.C., Section 185 .....	3

### Rule

Federal Rules of Civil Procedure, Rule 12(b)(6) .....	4
---	---



No. 83-210

# In the Supreme Court

OF THE

United States

---

OCTOBER TERM, 1983

---

LLOYD VICKROY,  
*Petitioner,*

VS.

ROCKWELL INTERNATIONAL CORPORATION,  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL UNION 2295,  
*Respondents.*

---

## OPPOSITION TO GRANTING WRIT OF CERTIORARI

---

The Respondent (hereinafter "Union"), opposes the granting of a petition for writ of certiorari sought by the Petitioner, for the following reasons:

1. **The Magistrate did not exceed her authority under 28 U.S.C. section 636**

The proceedings below were entirely in conformity with the provisions of 28 U.S.C. section 636. Petitioner's Appendix A to his petition shows that the Magistrate heard various motions and issued a Report and Recommendation to District Judge Cynthia Hall pursuant to 28 U.S.C. section 636(b)(1)(B). That report details with specificity the chronology of events with respect to the filing of various complaints and amended complaints, the motions for default and for dismissal and the Magistrate's efforts at try-

ing to get the Petitioner to properly amend his complaint or seek legal counsel to assist him. Contrary to the Petitioner's contention, the Magistrate did not issue a final ruling; rather, the Magistrate made only a recommendation as to how the District Court should dispose of the matter. Thereafter, Judge Hall, after reviewing all of the records, files and the Report and Recommendation of the Magistrate and the objections thereto, issued an order dismissing the amended complaint. This procedure tracks those outlined in 28 U.S.C. section 636.

Thus, the Magistrate did not engage in any conduct or exercise any authority beyond that set forth in the statute and Petitioner's contention to the contrary is meritless.

**2. There was no error by the lower courts in evaluating Petitioner's claims for alleged violation of civil rights**

The Petitioner is contending that the lower courts refused to let him proceed with various civil rights claims until his contractual obligations were exhausted. This is clearly inaccurate. The decision of the Ninth Circuit is very brief and does not specifically reach Petitioner's arguments with respect to the civil rights allegations of his complaints. That decision states only that the pleadings are deficient and that the District Judge properly evaluated Petitioner's claims and gave him sufficient opportunities to cure the defects.

The decision of the District Court was to adopt the Magistrate's report, only after a careful review of the entire file. As to that portion of the Motion to Dismiss dealing with the Court's lack of jurisdiction over certain allegations of the Complaint, it is clear that the Court had no

jurisdiction over claims dealing with conduct arguably protected by the National Labor Relations Act. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).

As to Petitioner's civil rights claims, there was no conclusion by the District Court that Petitioner had to exhaust any National Labor Relations Board procedures prior to bringing this lawsuit. Rather, the District Court determined that Petitioner had failed to allege sufficient facts to state a claim upon which relief could be granted for deprivation of civil rights.

Petitioner's assertions that the decisions of the lower courts were in conflict with this Court's decisions in *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728 (1981) and *Clayton v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America*, 451 U.S. 679 (1981) are without merit. *Barrentine, supra*, deals with whether a suit under the Fair Labor Standards Act is barred by a prior arbitration decision on the same facts and *Clayton, supra*, concerns the requirement of exhausting internal union appeals prior to the commencement of a lawsuit under 29 U.S.C. section 185. Neither of these decisions is relevant to this action. There was no allegation in any of Petitioner's complaints that a prior arbitration decision had occurred and thus, *Barrentine* is inapplicable. As to *Clayton*, the issue of exhaustion of internal union remedies also was not presented to the lower courts. The District Court ruled that it had no jurisdiction over certain claims, not, as Petitioner suggests, that he be required to exhaust some internal union remedy before bringing the lawsuit.

### CONCLUSION

The decisions of the lower courts were in conformity with provisions of 28 U.S.C. section 636, and Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Courts did not exceed their authority in any way nor did they commit error. Petitioner has failed to present any novel issues which should be considered by this Court.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DAVIS, FROMMER & JESINGER

By ELIZABETH R. LISHNER

*Attorneys for Respondent*

*International Brotherhood*

*of Electrical Workers*

*Local 2295*